

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

VICTORIA GARCIA,

Petitioner,

vs.

JO GENTRY, et al.,

Respondents.

Case No. 2:16-cv-00063-RFB-NJK

**ORDER**

Petitioner has submitted a statement of her inmate account and a financial certificate (#1), which the court construes as an application to proceed in forma pauperis, and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court finds that petitioner is unable to pay the filing fee. The court has reviewed the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The petition currently is without merit on its face. The court will give petitioner the opportunity to file an amended petition.

Petitioner alleges that respondents have violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment when they designated her as a member of a security threat group, i.e., a gang. “Habeas corpus proceedings are the proper mechanism for a prisoner to challenge the ‘legality or duration’ of confinement. A civil rights action, in contrast, is the proper method of challenging ‘conditions of . . . confinement.’” Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (quoting Preiser v. Rodriguez, 411 U.S. 475, 484, 498-99 (1973)). Petitioner does not allege any facts that could show that her designation as a gang member has affected the duration of her imprisonment. She does allege that the designation is affecter her ability to be granted parole, but she has no constitutionally protected right

1 to parole. Moor v. Palmer, 603 F.3d 658, 661-62 (9th Cir. 2010). If the gang-member designation has  
2 otherwise affected the length of petitioner's sentence, then she needs to allege those facts in an amended  
3 petition. She also will need to allege all of the facts that she has alleged in her original petition, or they  
4 will be waived. King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).

5 IT IS THEREFORE ORDERED that the clerk of the court shall change the docket entry for the  
6 financial certificate (#1) to an application to proceed in forma pauperis.

7 IT IS FURTHER ORDERED that the application to proceed in forma pauperis is **GRANTED**.  
8 Petitioner need not pay the filing fee of five dollars (\$5.00).

9 IT IS FURTHER ORDERED that the clerk of the court shall file the petition for a writ of habeas  
10 corpus pursuant to 28 U.S.C. § 2254.

11 IT IS FURTHER ORDERED that the clerk of the court shall send petitioner a petition for a writ  
12 of habeas corpus pursuant to 28 U.S.C. § 2254 form with instructions. Petitioner shall have thirty (60)  
13 days from the date that this order is entered in which to file an amended petition to correct the noted  
14 deficiencies. Neither the foregoing deadline nor any extension thereof signifies or will signify any  
15 implied finding of a basis for tolling during the time period established. Petitioner at all times remains  
16 responsible for calculating the running of the federal limitation period under 28 U.S.C. § 2244(d)(1) and  
17 timely asserting claims. Failure to comply with this order will result in the dismissal of this action.

18 IT IS FURTHER ORDERED that petitioner shall clearly title the amended petition as such by  
19 placing the word "AMENDED" immediately above "Petition for a Writ of Habeas Corpus Pursuant to  
20 28 U.S.C. § 2254" on page 1 in the caption, and petitioner shall place the case number, 2:16-cv-00063-  
21 RFB-NJK, above the word "AMENDED."

22 IT IS FURTHER ORDERED that the clerk shall add Adam Laxalt, Attorney General for the  
23 State of Nevada, as counsel for respondents.

24 ///

25 ///

26 ///

27

28

1 IT IS FURTHER ORDERED that the clerk shall electronically serve upon respondents a copy  
2 of the petition and this order. Respondents' counsel shall enter a notice of appearance herein within  
3 twenty (20) days of entry of this order, but no further response shall be required from respondents until  
4 further order of the court.

5 DATED: February 10, 2017

6  
7 

8 RICHARD F. BOULWARE, II  
9 United States District Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28